

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 4:19-cv-482
	)	
v.	)	
	)	
CARLTON W. FLEMING	)	
and the COLLIN COUNTY DISTRICT	)	
CLERK,	)	
Defendants.	)	

**COMPLAINT**

The United States of America, pursuant to 26 U.S.C. §§ 7401 and 7403, at the direction of a delegate of the Attorney General of the United States, and with the authorization and sanction of a delegate of the Secretary of the Treasury, brings this civil action (1) to reduce to judgment unpaid federal tax liabilities owed by Carlton W. Fleming and (2) to enforce the associated federal tax liens against certain real property belonging to him. For its complaint, the United States alleges as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Jurisdiction is conferred upon this district court pursuant to 26 U.S.C. §§ 7402(a) and 7403, and 28 U.S.C. §§ 1331, 1340, and 1345.
2. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1396 because Defendant Carlton W. Fleming resides in this district, the real property at issue is located in this district, and the liabilities arose in this district.

3. Plaintiff is the United States of America.
4. Defendant Carlton W. Fleming resides in Collin County, Texas, within the jurisdiction of this Court.
5. Defendant Collin County District Clerk, is joined as a party as required by 26 U.S.C. § 7403(b), because it may claim interest in the property upon which the United States seeks to enforce its liens.

#### **THE SUBJECT PROPERTY**

6. The title of the real property upon which the United States seeks to enforce its federal tax liens is owned or held in the name of Carlton W. Fleming, and consists of the land, along with all improvements, buildings, and appurtenances thereon, now known as and numbered 604 Isleworth Lane, McKinney, Texas 75070 (the “Real Property”). The legal description of the Real Property is as follows:

BEING LOT 18, BLOCK B, OF ISLEWORTH ADDITION, AN ADDITION TO THE CITY OF MCKINNEY, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET M, SLIDE 584, OF THE MAP RECORDS OF COLLIN COUNTY, TEXAS.

#### **COUNT 1**

##### **Judgment against Defendant Carlton W. Fleming for Tax Liabilities**

##### ***Income Tax Liabilities***

7. On the following dates, a delegate of the Secretary of the Treasury made assessments against Defendant Carlton W. Fleming for federal income tax and related penalties (collectively “the income tax liability”) as follows:

<b>Tax Period Ending</b>	<b>Assessment Date</b>	<b>Assessment Type</b>	<b>Amount Assessed</b>
12/31/2007	11/03/2008	Tax (Form 1040)	\$1,657,393.00
		Penalty (Late Payment)	\$ 51,625.94
	10/01/2012	Penalty (Late Payment)	\$ 264,871.33

8. A delegate of the Secretary of the Treasury gave notice and demand for payment of the income tax liability described above to Defendant Carlton W. Fleming. After the application of statutory interest, penalties, fees, other additions, abatements, payments, and credits, the income tax liability described above had a \$2,003,671 unpaid balance due of as of June 7, 2019.

9. This action has been commenced within the applicable statute of limitations. The ten-year 26 U.S.C. § 6502(a)(1) collection statute was extended by 199 days because of a Collections Due Process proceeding initiated by Defendant Carlton W. Fleming, and by an additional 818 days because of two Installment Agreements entered into between Defendant Carlton W. Fleming and the IRS.

10. Despite notice and demand for payment, Defendant Carlton W. Fleming has failed, neglected, or refused to fully pay the income tax liability described above.

11. Pursuant to 26 U.S.C. § 7402, the United States is entitled to a judgment that Defendant Carlton W. Fleming is liable to the United States for the income tax liability (including assessed and accrued interest) in the amount of \$2,003,671 as of June 7, 2019, plus prejudgment and post judgment interest thereon at the rates set forth in 26 U.S.C. § 6601, 6621 and 28 U.S.C. § 1961(c), until paid.

**COUNT 2**  
**Enforcement of Federal Tax Liens**

12. Pursuant to 26 U.S.C. §§ 6321 and 6322, as a result of the neglect, refusal or failure by Defendant Carlton W. Fleming to pay the tax liabilities described above after notice and demand, federal tax liens arose on the dates of the assessments, and attached to all property and rights to property belonging to Defendant Carlton W. Fleming, including the Real Property.

13. Additionally, the Internal Revenue Service publicly filed Notices of Federal Tax Lien (“NFTL”) in accordance with 26 U.S.C. § 6323(f) with the County Recorder of Collin County, Texas in regard to the tax liabilities described below, on the following dates:

Type of Tax	Tax Periods Ending	Date NFTL Filed
Income (Form 1040)	12/31/2007	05/15/2009
		12/21/2012
		06/24/2016
		11/30/2018
		04/12/2019

14. Pursuant to 26 U.S.C. § 7403, the United States is entitled to enforce the federal tax liens described in above against the Real Property by foreclosure sale or other court orders. In particular, the United States is entitled to have the entire Real Property sold in a judicial sale, or by a receiver appointed for that purpose, free and clear of all rights, titles, claims, liens, and interests of the parties, including any rights of redemption, with the proceeds of the sale distributed: first, to pay the costs and expenses of the sale, including any costs and expenses incurred to secure and maintain the Real Property; second, to the defendant Collin County District Clerk, to pay court costs associated with an April 30, 2013 judgment entered in Cause No. 366-03939-2012, regarding real estate taxes then due and owing which are entitled to priority under 26 U.S.C. § 6323(b)(6); third, to the United States to pay the tax liabilities described above; and, fourth, to the other parties in accordance with the law; or, as otherwise determined by the Court in accordance with the law.

## **PRAYER**

WHEREFORE, the United States of America prays for a judgment determining:

- A. That Defendant Carlton W. Fleming is liable to the United States for the income tax liability arising out of 2012 in the amount of \$2,003,671 as of June 7, 2019, plus prejudgment and post judgment interest thereon at the rates set forth in 26 U.S.C. § 6601, 6621 and 28 U.S.C. § 1961(c), until paid;
- B. That the federal tax liens securing the tax liabilities described in this complaint shall be foreclosed or enforced by other court orders against the Real Property by sale of the entire Real Property in a judicial sale, or by a receiver appointed for that purpose, free and clear of all rights, titles, claims, liens, and interests of the parties, including any rights of redemption, with the proceeds of the sale distributed: first, to pay the costs and expenses of the sale, including any costs and expenses incurred to secure and maintain the Real Property; second, to Defendant Collin County District Clerk, to pay court costs associated with an April 30, 2013 judgment, entered in Cause No. 366-03939-2012, regarding real estate taxes then due and owing which are entitled to priority under 26 U.S.C. § 6323(b)(6); third, to the plaintiff United States to pay the tax liabilities set forth above; and fourth, to the other parties in accordance with the law; or, as otherwise determined by the Court in accordance with the law; and

C. That awards the United States such other and further relief as this Court deems just and proper.

Respectfully submitted,

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

/s/ Thomas M. Herrin  
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ATTORNEYS FOR UNITED STATES

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>																																					
<p><b>(b)</b> County of Residence of First Listed Plaintiff _____  <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p>		<p>County of Residence of First Listed Defendant _____  <i>(IN U.S. PLAINTIFF CASES ONLY)</i>          NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p>																																					
<p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)</p>		<p>Attorneys (If Known)</p>																																					
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<table border="1"> <thead> <tr> <th>REAL PROPERTY</th> <th>CIVIL RIGHTS</th> <th>PRISONER PETITIONS</th> </tr> </thead> <tbody> <tr> <td> <input type="checkbox"/> 210 Land Condemnation  <input type="checkbox"/> 220 Foreclosure  <input type="checkbox"/> 230 Rent Lease &amp; Ejectment  <input type="checkbox"/> 240 Torts to Land  <input type="checkbox"/> 245 Tort Product Liability  <input type="checkbox"/> 290 All Other Real Property         </td> <td> <input type="checkbox"/> 440 Other Civil Rights  <input type="checkbox"/> 441 Voting  <input type="checkbox"/> 442 Employment  <input type="checkbox"/> 443 Housing/ Accommodations  <input type="checkbox"/> 445 Amer. w/Disabilities - Employment  <input type="checkbox"/> 446 Amer. w/Disabilities - Other  <input type="checkbox"/> 448 Education         </td> <td> <input type="checkbox"/> 510 Motions to Vacate Sentence  <b>Habeas Corpus:</b>  <input type="checkbox"/> 530 General  <input type="checkbox"/> 535 Death Penalty  <input type="checkbox"/> 540 Mandamus &amp; Other  <input type="checkbox"/> 550 Civil Rights  <input type="checkbox"/> 555 Prison Condition  <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement         </td> </tr> </tbody> </table>		REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))																														
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			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609																																			
<b>V. ORIGIN</b> <i>(Place an "X" in One Box Only)</i>																																							
<input type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation																																							
		<p>Cite the U.S. Civil Statute under which you are filing (<i>Do not cite jurisdictional statutes unless diversity</i>):</p>																																					
<b>VI. CAUSE OF ACTION</b>		<p>Brief description of cause:</p>																																					
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No																																			
<b>VIII. RELATED CASE(S) IF ANY</b>		(See instructions): JUDGE		DOCKET NUMBER																																			
DATE	SIGNATURE OF ATTORNEY OF RECORD																																						
<b>FOR OFFICE USE ONLY</b>																																							
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE																																			

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_ District of \_\_\_\_\_

*Plaintiff(s)*

v.

Civil Action No.

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: (*Defendant's name and address*)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: